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COOLEY GODWARD KRONISH LLP			ERB, NATHAN	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	09/702,045	MORSBERGER, LOUIS J.
	Examiner NATHAN ERB	Art Unit 3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

Status

1) Responsive to communication(s) filed on 18 July 2008.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-26 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-26 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No. (s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
 5) Notice of Informal Patent Application
 6) Other _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 18, 2008, has been entered.

Response to Arguments

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Applicant's response to Office action was received on July 18, 2008.

4. Please note the new rejections of the claims under 35 U.S.C. 101 below in this Office action.

5. In response to Applicant's amendment of the claims, the corresponding claim rejections have been correspondingly amended below in this Office action.

6. Examiner believes that the amendments to the prior art rejections below in this Office action render Applicant's arguments to be no longer applicable.

Claim Rejections - 35 USC § 101

7. Claims 1-5, 9-12, and 21-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-5, 9-12, and 21-22 are directed to a series of steps. In order for a series of steps to be considered a

proper process under § 101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes should positively recite the other statutory class to which they are tied (e.g., by identifying the apparatus that accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state). Claims 1-5, 9-12, and 21-22 identify neither the apparatus performing the recited steps nor any transformation of underlying materials, and accordingly are directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

8. Claims 1-9, 16-21, and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stimson et al., U.S. Patent No. 6,502,745 B1, in view of Hamlin et al., U.S. Patent No. 6,477,504 B1.

As per **Claims 1 and 25-26**, Stimson et al. discloses:

- a method of collecting survey information relative to a transaction (column 1, lines 21-29; column 3, lines 56-64; column 9, lines 25-38; column 10, lines 12-18);
- receiving (monetary) transaction information related to a transaction (between a consumer and a merchant), the (monetary) transaction information including consumer information (about the consumer participant in the [monetary] transaction) and (the

monetary transaction information further including) merchant information (about the merchant participant in the [monetary] transaction) (column 7, line 22, through column 8, line 4; column 9, lines 25-38; here, consumer information would be the card security number; here, merchant information would be type of goods/services purchased);

- comparing information with predetermined information (column 9, lines 25-38); this citation is being used for the general idea of comparing information with predetermined information);

- comparing the merchant information with predetermined merchant information (column 9, lines 25-38; here, merchant information would be type of goods/services purchased);

- determining whether to invite the consumer to complete a survey related to the (monetary) transaction based at least partially on (at least one of) the comparison of the information and the comparison of the merchant information (column 1, lines 21-29; column 3, lines 56-64; column 9, lines 25-38; column 10, lines 12-18; here, merchant information would be type of goods/services purchased; this citation is being used for the idea of basing whether to invite on both merchant information, as well as information in general);

- a processor-readable medium comprising code representing instructions to cause a processor to perform functions (column 4, lines 50-60; column 6, line 65, through column 7, line 21; column 7, line 22, through column 8, line 4; system uses software; system has storage, so it would have processor-readable medium).

Stimson et al. fails to disclose wherein information being used to select participants is consumer information. Hamlin et al. discloses wherein information being used to select participants is consumer information (column 2, lines 51-63; column 9, lines 36-53; here, consumer information could be the consumer's age, for example). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Stimson et al. such that information being used to select participants is consumer information, as disclosed by Hamlin et al. Hamlin et al. provides motivation in that using consumer information to select survey recipients allows a survey to be targeted toward consumers with those particular characteristics (column 2, lines 51-63; column 9, lines 36-53).

Stimson et al. fails to disclose wherein information being used to select participants is a projected invitation quantity. Hamlin et al. further discloses wherein information being used to select participants is a projected invitation quantity (column 1, line 57, through column 2, line 6). Therefore, the prior art included each element claimed although not necessarily in a single reference. One of ordinary skill in the art could have combined the elements as claimed by known methods (all of the relevant claim limitations involve conducting a survey, including determining what participants to survey; Hamlin et al. simply adds additional criteria for participant selection to the participant selection criteria of Stimson et al.; if Stimson et al. is capable of selecting participants based on some criteria, it should be capable of being modified to select participants based on other criteria, as well). In combination, each element merely would have performed the same function as it did separately (the additional criteria of

Hamlin et al. would not interfere with the previous functionality of Stimson et al.; they only allow the survey participants to be additionally specified; nor would the limitations of Hamlin et al. function any differently in the context of Stimson et al.; they would still act as criteria for specifying the selection of survey participants). One of ordinary skill in the art would have recognized that the results of the combination were predictable (the use of the additional criteria of Hamlin et al. in Stimson et al. has the predictable effect of allowing the further specification of survey participant selection according to those criteria; there are no known unexpected consequences of the combination). Thus, the combination would have been obvious.

As per Claim 2, Stimson et al. further discloses: wherein the consumer information includes a consumer identification code (column 7, line 22, through column 8, line 4). Stimson et al. fails to disclose the predetermined consumer information includes information relating to consumers defined as prospective offerees. Hamlin et al. further discloses the predetermined consumer information includes information relating to consumers defined as prospective offerees (column 2, lines 51-63; column 9, lines 36-53). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Stimson et al. as modified in the rejection for claims 1 and 25-26 such that the predetermined consumer information includes information relating to consumers defined as prospective offerees, as disclosed by Hamlin et al. Hamlin et al. provides motivation in that having predetermined consumer

information for prospective offerees allows a survey to be targeted toward consumers with those particular characteristics (column 2, lines 51-63; column 9, lines 36-53).

As per Claim 3, Stimson et al. further discloses: wherein the predetermined merchant information includes information relating to categories of purchases, and wherein the determining whether to invite the consumer to complete a survey includes determining whether the transaction corresponds to one of said categories of purchases (column 9, lines 25-38).

As per Claim 4, Stimson et al. further discloses: wherein the determining whether the transaction corresponds to one of said categories of purchases includes determining whether there is an unsatisfied quota of survey invitations for the particular type of transaction (column 9, lines 25-38; column 11, lines 63-67; column 12, lines 51-53; column 12, lines 58-60).

As per Claim 5, Stimson et al. further discloses: wherein the determining whether to invite the consumer to complete a survey includes determining whether the transaction meets predetermined criteria and is a qualifying transaction (column 3, lines 56-64; column 9, lines 25-38).

As per Claim 6, Stimson et al. further discloses: transmitting to the consumer an invitation to complete a survey relating to the qualifying transaction; receiving survey

information from the consumer relating to the qualifying transaction; and processing the received survey information (column 9, lines 25-38; column 9, line 39, through column 10, line 2).

As per **Claim 7**, Stimson et al. further discloses: wherein the predetermined consumer information is provided by a party to the transaction other than a merchant (column 6, line 65, through column 7, line 21; column 7, line 22, through column 8, line 4; column 9, lines 25-38; column 11, line 63, through column 12, line 63).

As per **Claim 8**, Stimson et al. further discloses: offering processed survey information to the merchant; and granting access to the processed survey information to the merchant (column 1, lines 21-29; column 10, lines 12-18; column 10, line 19, through column 11, line 5; column 11, line 63, through column 12, line 63).

As per **Claim 9**, Stimson et al. further discloses: wherein the transaction information includes a transaction record, the transaction record being in an electronic form, and the receiving transaction information includes receiving a set of transaction information regarding several transactions (column 7, line 22, through column 8, line 4).

As per **Claim 16**, Stimson et al. discloses:

- a system for collecting survey information relative to a transaction between a consumer and a merchant (column 3, lines 56-64; column 7, line 22, through column 8, line 4; column 9, line 39, through column 10, line 2);

- a monitoring interface configured to process transaction information from a transaction, the transaction information including a transaction record with information relating to a consumer to the transaction, the transaction record being in an electronic form (column 7, line 22, through column 8, line 4; the transaction record would be part of the purchase records; here, information relating a consumer to the transaction would be the card security number);

- a processor configured to analyze said transaction record relative to stored information, the processor further configured to determine whether to solicit survey information from the consumer to the transaction based at least partially on the transaction record and the stored information (column 4, lines 50-60; column 6, line 65, through column 7, line 21; column 7, line 22, through column 8, line 4; column 9, lines 25-38; here, the stored information would be the criteria chosen for survey participants; here, type of goods/services purchased would be information contained in the transaction record that could be used to select survey participants);

- a participant interface configured to enable the consumer to the transaction to provide survey information (column 9, line 39, through column 10, line 2).

Stimson et al. fails to disclose wherein information being used to select participants is consumer information. Hamlin et al. discloses wherein information being used to select participants is consumer information (column 2, lines 51-63; column 9,

lines 36-53; here, consumer information could be the consumer's age, for example). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Stimson et al. such that information being used to select participants is consumer information, as disclosed by Hamlin et al. Hamlin et al. provides motivation in that using consumer information to select survey recipients allows a survey to be targeted toward consumers with those particular characteristics (column 2, lines 51-63; column 9, lines 36-53).

Stimson et al. fails to disclose wherein information being used to select participants is a projected invitation quantity. Hamlin et al. further discloses wherein information being used to select participants is a projected invitation quantity (column 1, line 57, through column 2, line 6). Therefore, the prior art included each element claimed although not necessarily in a single reference. One of ordinary skill in the art could have combined the elements as claimed by known methods (all of the relevant claim limitations involve conducting a survey, including determining what participants to survey; Hamlin et al. simply adds additional criteria for participant selection to the participant selection criteria of Stimson et al.; if Stimson et al. is capable of selecting participants based on some criteria, it should be capable of being modified to select participants based on other criteria, as well). In combination, each element merely would have performed the same function as it did separately (the additional criteria of Hamlin et al. would not interfere with the previous functionality of Stimson et al.; they only allow the survey participants to be additionally specified; nor would the limitations of Hamlin et al. function any differently in the context of Stimson et al.; they would still

act as criteria for specifying the selection of survey participants). One of ordinary skill in the art would have recognized that the results of the combination were predictable (the use of the additional criteria of Hamlin et al. in Stimson et al. has the predictable effect of allowing the further specification of survey participant selection according to those criteria; there are no known unexpected consequences of the combination). Thus, the combination would have been obvious.

As per Claim 17, Stimson et al. further discloses: wherein the transaction record includes information relating to a category of the transaction, and said processor determines whether to solicit survey information based on a category of the transaction (column 4, lines 50-60; column 6, line 65, through column 7, line 21; column 7, line 22, through column 8, line 4; column 9, lines 25-38).

As per Claim 18, Stimson et al. further discloses: wherein the information relating to the consumer to the transaction includes transaction information for the consumer to the transaction, and the processor compares transaction information of consumers to transactions with predetermined transaction information of participants in the survey (column 7, line 22, through column 8, line 4; column 9, lines 25-38). Stimson et al. further discloses wherein the transaction information is an identification code (column 7, line 22, through column 8, line 4). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Stimson et al. as modified in the rejection for claim 16 such that the information relating

to the consumer to the transaction includes an identification code for the consumer to the transaction, and the processor compares identification codes of consumers to transactions with predetermined identification codes of participants in the survey; in doing so, the transaction information would be an identification code, as disclosed by Stimson et al. Stimson et al. provides motivation in that an identification code serves to specify a particular consumer from among a group of consumers; therefore, it would be an option for differentiating consumers in survey participant selection (column 6, line 65, through column 7, line 21; column 7, line 22, through column 8, line 4).

As per **Claim 19**, Stimson et al. further discloses: a merchant interface configured to enable a merchant to access analyzed survey information (column 1, lines 21-29; column 10, lines 12-18; column 10, line 19, through column 11, line 5; column 11, line 63, through column 12, line 63).

As per **Claim 20**, Stimson et al. further discloses: wherein the stored information is provided by a party to a transaction other than the merchant (column 6, line 65, through column 7, line 21; column 7, line 22, through column 8, line 4; column 9, lines 25-38; column 11, line 63, through column 12, line 63).

As per **Claim 21**, Stimson et al. further discloses: wherein the receiving transaction information includes receiving the transaction information from a financial

institution associated with the consumer (column 6, line 65, through column 7, line 21; column 7, line 22, through column 8, line 4).

As per **Claim 23**, Stimson et al. further discloses: wherein the monitor is configured to receive the transaction record from a financial institution associated with the consumer (column 6, line 65, through column 7, line 21; column 7, line 22, through column 8, line 4).

As per **Claim 24**, Stimson et al. further discloses: wherein the stored consumer information is provided by a financial institution associated with the consumer (column 6, line 65, through column 7, line 21; column 7, line 22, through column 8, line 4).

9. Claims 10-15 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stimson et al. in view of Thomas, U.S. Patent Application Publication No. US 2002/0002482 A1.

As per **Claim 10**, Stimson et al. discloses:

- a method of collecting survey information relative to a transaction (column 1, lines 21-29; column 3, lines 56-64; column 9, lines 25-38; column 10, lines 12-18);
- developing historical consumer information for each of the participating consumers (column 7, line 22, through column 8, line 4; here, historical consumer information would be the purchase records);

- receiving transaction information relating to a transaction, the transaction information including information relating to the consumer in the transaction (column 7, line 22, through column 8, line 4; column 9, lines 25-38; here, the information relating to the consumer in the transaction is the card security number);

- determining, using the information relating to the consumer in the transaction, whether the consumer in the transaction is a participating consumer (column 7, line 22, through column 8, line 4; here, the information relating to the consumer in the transaction is the card security number; the host computer of the main processor checks the database for the data associated with the codes; this step also reveals whether the consumer in the transaction is a participating consumer);

- determining, using the historical consumer information, whether to collect survey information from the consumer in the transaction (column 9, lines 25-38; historical consumer information would include original transaction information that is used to determine whether to survey a consumer).

Stimson et al. fails to disclose inviting consumers to participate in a survey program. Thomas discloses inviting consumers to participate in a survey program (Figure 8; paragraph [0029]; paragraphs [0072]-[0073]). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Stimson et al. such that it invites consumers to participate in a survey program, as disclosed by Thomas. Thomas provides motivation in that inviting consumers to participate in a survey program allows a database to be built that is useful for selecting survey participants (paragraph [0029]).

Stimson et al. fails to disclose receiving consumer information from participating consumers. Thomas further discloses receiving consumer information from participating consumers (paragraph [0029]; paragraphs [0072]-[0073]). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Stimson et al. as modified above in this rejection such that it receives consumer information from participating consumers, as disclosed by Thomas. Thomas provides motivation in that receiving consumer information from participating consumers allows a database to be built that is useful for selecting survey participants (paragraph [0029]).

Stimson et al. fails to disclose determining, based on a projected invitation quantity, whether to collect survey information from the consumer. Thomas further discloses determining, based on a projected invitation quantity, whether to collect survey information from the consumer (Figure 4; paragraphs [0061]-[0066]). Therefore, the prior art included each element claimed although not necessarily in a single reference. One of ordinary skill in the art could have combined the elements as claimed by known methods (all of the relevant claim limitations involve conducting surveys, including determining what participants to survey; Thomas simply adds a registration step to build a database of potential survey participants and also an additional criterion for participant selection to the participant selection criteria of Stimson et al.; the registration step is a simple recordation step that can be added prior to actual survey participant selection in Stimson et al. with no complications; if Stimson et al. is capable of selecting participants based on some criteria, it should be capable of being modified

to select participants based on other criteria, as well). In combination, each element merely would have performed the same function as it did separately (the additional limitations of Thomas would not interfere with the previous functionality of Stimson et al.; they only allow the survey participants to be pre-registered and to be additionally specified when selecting survey participants; nor would the limitations of Thomas function any differently in the context of Stimson et al.; they would still serve their registration and survey-participant-specifying functions). One of ordinary skill in the art would have recognized that the results of the combination were predictable (the use of the registration step of Thomas in Stimson et al. has the predictable effect of building a database of potential survey participants; the use of the additional criterion of Thomas in Stimson et al. has the predictable effect of allowing the further specification of survey participant selection according to a projected invitation quantity; there are no known unexpected consequences of the combination). Thus, the combination would have been obvious.

As per Claim 11, Stimson et al. further discloses: wherein the information relating to the consumer in the transaction includes a consumer identification code, and the historical consumer information includes the number of surveys completed by the consumer (column 7, line 22, through column 8, line 4; column 9, lines 25-38).

As per Claim 12, Stimson et al. further discloses: wherein the transaction information includes a category of the transaction, and the determining whether to

collect survey information from the consumer in the transaction uses the category of the transaction (column 7, line 22, through column 8, line 4; column 9, lines 25-38).

As per Claim 13, Stimson et al. further discloses: wherein soliciting survey information includes transmitting a survey invitation to the consumer to the transaction (column 9, line 39, through column 10, line 2); having instructions regarding the survey in the survey instrument (column 10, lines 12-18; column 10, line 19, through column 11, line 5). Stimson et al. fails to disclose wherein the survey invitation includes the survey instrument. Thomas further discloses wherein the survey invitation includes the survey instrument (paragraph [0030]; paragraphs [0067]-[0071]). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Stimson et al. as modified in the rejection for claim 10 such that the survey invitation includes the survey instrument, as disclosed by Thomas. Thomas provides motivation in that when the survey invitation includes the survey instrument, the survey participants immediately have the survey instrument to work on when they receive their survey invitations (paragraph [0030]; paragraphs [0067]-[0071]).

As per Claim 14, Stimson et al. fails to disclose wherein the survey invitation includes a survey instrument. Thomas further discloses wherein the survey invitation includes a survey instrument (paragraph [0030]; paragraphs [0067]-[0071]). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Stimson et al. as modified in the rejection for claim 13 such that

the survey invitation includes a survey instrument, as disclosed by Thomas. Thomas provides motivation in that when the survey invitation includes the survey instrument, the survey participants immediately have the survey instrument to work on when they receive their survey invitations (paragraph [0030]; paragraphs [0067]-[0071]).

As per Claim 15, Stimson et al. further discloses: wherein the transaction information includes a transaction record, the transaction record being in an electronic form, and the code representing instructions to cause a processor to receive transaction information is configured to cause a processor to receive a set of transaction information regarding several transactions (column 4, lines 50-60; column 6, line 65, through column 7, line 21; column 7, line 22, through column 8, line 4).

As per Claim 22, Stimson et al. further discloses: wherein the receiving transaction information includes receiving the transaction information from a financial institution associated with the consumer (column 6, line 65, through column 7, line 21; column 7, line 22, through column 8, line 4).

Conclusion

10. **Examiner's Note:** Examiner has cited particular portions of the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider

the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Erb whose telephone number is (571) 272-7606. The examiner can normally be reached on Mondays through Fridays, 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nathan Erb
Examiner
Art Unit 3628

Nhe

/JOHN W HAYES/
Supervisory Patent Examiner, Art Unit 3628